IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4004 of 2001
To
FIRST APPEAL No. 4018 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DY COLLECTOR - Appellant(s)
Versus
MOHANBHAI HARIBHAI PATEL - Defendant(s)

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Appearance :
MR SUNEET SHAH GOVERNMENT PLEADER for Appellant(s) : 1,
MR MD VAKIL for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 23/11/2006

ORAL COMMON JUDGMENT

1. So far as First Appeal Nos. 4004 of 2001 to 4018 of 2001 are concerned, they arise from the common judgment and award made in Land Reference Case No. 168 of

1996 to Land Reference Case No. 182 of 1996. Since the subject matter is the same i.e., agricultural land situated at village Kahipur, they have been acquired for the same project.

2. In this case, Notification under Section 4 (1) of the Land Acquisition Act [hereinafter referred to as the "Act"], declaration under Section 6 of the Act and award under Section 11 of the Act are the same i.e., 10th February, 1993, 31st January, 1994 and 28th July, 1994 respectively. The appellant granted compensation of Rs.3=00 per sq. mtr. In these appeals, additional sum of Rs.15=00 per sq. mtr. Has been claimed.

3. During the course of hearing of these appeals, the appellants sought to have produced the additional evidence on record and for that purpose, applications under Order 41 Rule 27 of the Civil Procedure Code were filed. By detailed order dated 29th November, 2006, this Court had rejected them. Hence, these appeals are required to be dealt with in accordance with the material which is already on record.

4. I have heard Mr. Suneet Shah learned Government Pleader for the appellant and Mr. M.D. Vakil learned advocate for the respondents. I have also perused the record and proceedings of the case. According to Mr.

Shah, the decision of the Court to grant additional sum of Rs.3=00 per sq. mtr., is erroneous. The learned Judge committed error in placing reliance upon the previous judgment and award in respect of land of village Sabaliya which were acquired for the same purpose. According to him, the distance between village Sabaliya and village Kahipur is 13 kms., and, therefore, the said award could not have been taken into consideration. As against that Mr. M. D. Vakil has supported the judgment and has submitted that since the lands of village Sabaliya were acquired for this very purpose, the learned Judge was justified in placing reliance on the previous judgment. According to him, the distance between two place is not so much that the award in respect of lands of village Sabaliya cannot be taken into consideration. He has further submitted that the amount of additional compensation is very small and on the ground of smallness of the amount alone, the appeals deserve dismissal.

5. Having given careful consideration to the submission of the learned advocates for the parties and having closely perused the record of the case, it clearly appears that there is no dispute between the parties with regard to procedure of acquisition. The only dispute which is raised is in relation to the quantum of compensation. Initially, it was the respondent who disputed the quantum of compensation awarded by the

appellant and now it is the appellant who has raised the dispute in respect of the amount of compensation awarded by the Court. In First Appeal No. 4004 of 2001 and its allied matters, before the Reference Court, Mohanbhai Haribhai was examined and his evidence is at Exh. 33. Reliance was also placed on the previous judgment and award made in respect of village Sabaliya which was produced at Exh. 27. Here also no evidence was led by the other side. I have also perused the evidence of Mohanbhai Haribhai. They are more or less on the same line.

6. Further the record shows that previous judgment and award made by the Reference Court at Mehsana in respect of lands at village Sabaliya which were acquired for the very purpose, namely construction of Dharoi Canal Project, was produced at Exh.27. From the evidence of this witness, it appears that the boundaries of village Sabaliya and village Kahipur, as also village Ambasana are very close to each other. Hence, when there is award in respect of village Sabaliya, the learned Judge was justified in placing reliance on it to assess the compensation. In the said case, the learned Judge had awarded additional sum of Rs.15=00 per sq. mtr. Therefore, I do not see any error having been committed by the Reference Court to determine the market value of the land in question at Rs.18=00 per sq. mtr. When this is so and when there is no other reliable evidence to the

contrary, I do not find any reason to interfere with the conclusion drawn by the Reference Court. This is more so because the award amounts are quite small. This Court time and again has said that when the amounts involved in the cases are small, the Court should refrain from disturbing the award. This Court in the case of Deputy Collector v. Ranchhodji Bhikaji Thakor has rendered decision dated 7th December, 2005 in First Appeal No. 3650 of 2005. The Court while referring to the observations made in earlier case, has observed as under :-

> "3. It is clear that in all these appeals the claim involved is less than Rs.30,000=00. The Division Bench of this Court in First Appeal No. 7163 of 1999 to 7198 of 1999 observed thus :
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> > "3. On a bare reading of above statement, it is evident that the claim involved in these appeals is less than Rs.30,000=00 involved in an appeal filed under Section 54 of the Act, the same can be dismissed summarily on the ground that the appeal relates to small and and petty claim. The amount involved in each of these appeals is small, less than Rs.30,000=00. In our opinion, by admitting the appeals, the respondents would be put to unnecessary hardships and financial burden for engaging advocate to contest the appeals which involve small claims. We, therefore, summarily dismiss these appeals on the ground of smallness of the claim involved."

7. The next question is whether the respondent is entitled to receive interest on Solatium under Section 23 (2) of the Act as well as additional amount payable under Section 23 (1A) of the Act. In the instant case, that has

been disallowed by the Reference Court. In this appeal Mr. Vakil has made a grievance about it and has submitted that even though the respondents have not filed cross appeal or cross objections, this Court can certainly grant the said relief to the respondents in the appeals of the State Government.

7.1. Order 41 Rule 33 of the Civil Procedure Code deals with Power of Court of Appeal. It reads as under :

> **Rule 33 : Power of Court of Appeal**:- The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection [and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees]:
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> [Provided that the Appellate Court shall not make any order under Section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order."

7.2. The aforesaid provision therefore, permits the appellate Court to grant appropriate relief to the respondents, even if there is no cross objection or cross appeal. In the case of **Shree Vijay Cotton and Oil Mills**

Ltd., v. State of Gujarat, the Apex Court has rendered decision reported in **A.I.R. 1991 SC at pg. 656**. It has observed as under :-

> "The rules of procedure are handmaiden of justice. The procedural hustle cannot come in the way of substantive rights of citizens under the Act. Therefore, it would not be necessary for the appellant-claimant to have filed separate appeal/cross-objections before the High Court for the purposes of claiming interest under Section 28 or Section 54. He could claim the interest in the State-appeal. The fact, that he filed cross-objections which were dismissed as time barred, is wholly irrelevant. Decision of Gujarat High Court, Reversed."

7.3. By this decision, the Apex Court has overruled the decision of this Court. In view of the same, this Court is empowered to consider the grievance of Mr. Vakil and if found justified should grant appropriate relief.

7.4. At one point of time, it was not very clear whether interest could be awarded on Solatium under Section 23 (2) of the Act and additional amount payable under Section 23 (1A) of the Act. However, in the decision rendered by the Constitutional Bench of the Apex Court in the case of **Sunder v. Union of India reported in 2001 AIR SCW pg 3692, t**he position of law has been made clear and it is held by the Apex Court that interest on Solatium as well as additional amount awardable under Section 23 (1A) of the Act has to be paid by the State.

Mr. Shah learned Government Pleader is not in a position to controvert this position of law. In the case of Sunder v. Union of India (supra) the Apex Court has laid down as under :-

> “23. In deciding the question as to what amount would bear interest under Section 34 of the Act a peep into Section 31 (1) of the Act would be advantageous. That sub-section says: “On making an award under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.” The remaining sub-sections in that provision only deal with the contingencies in which the Collector has to deposit the amount instead of paying it to the party concerned. It is the legal obligation of the Collector to pay “the compensation awarded by him” to the party entitled thereto. We make it clear that the compensation awarded would include not only the total sum arrived at as per sub-section (1) of Section 23 but the remaining sub-sections thereof as well. It is thus clear from Section 34 that the expression “awarded amount” would mean the amount of compensation worked out in accordance with the provisions contained in Section 23, including all the sub-sections thereof.
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> 24. The proviso to Section 34 of the Act makes the position further clear. The proviso says that “if such compensation” is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 15% per annum from the date of expiry of the said period of one years” on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.” It is inconceivable that the solatium amount would attract only the escalated rate of interest from the expiry of one year and that there would be no interest on solatium during the preceding period. What the legislature intended was to make the aggregate amount under

> Section 23 of the Act to reach the hands of the person as and when the award is passed, at any rate as soon as he is deprived of the possession of his land. Any delay in making payment of the said sum should enable the party to have interest on the said sum until he receives the payment. Splitting up the compensation into different components for the purpose of payment of interest under Section 34 was not in the contemplation of the legislature when that Section was framed or enacted."

7.5. Further the Apex Court while quoting the passage from the decision of Punjab & Haryana High Court, rendered in the case of **State of Haryana v. Smt. Kailashwati reported in AIR 1980 Punjab & Haryana pg. 117**, has held as under :-

> "27. We think it useful to quote the reasoning advanced be Chief Justice S.S. Sandhawalia of the Division Bench of the Punjab & Haryana High Court in State of Haryana v. Smt. Kailashwati, (AIR 1980 Punj & Har. 117, Para 10) (supra).
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> "Once it is held as it inevitably must be that the solatium provided for under Section 23)2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of Section 28 does not even remotely refer to market value alone and in terms talks of compensation of the sum equivalent thereto. The interest awardable under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorize the grant of interest on solatium as well.
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> 28. In our view the aforesaid statement of law is in accord with the sound principle of

> interpretation. Hence the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium. The reference is answered accordingly.”

8. Thus, the Apex Court in no uncertain terms stated that the claimant shall be entitled to receive interest on additional amount under Section (1A) as well as sub-section (2) of Section 23 of the Act, since these amounts also form part of the compensation to which the claimant is entitled. The applicant is, therefore, directed to pay the interest on the additional amount under Section 23 (1A) of the Act as well as solatium under Section 23 (2) of the Act as per the direction of the Reference Court in respect of enhanced amount of compensation.

9. The result is the appeals are dismissed with no order as to costs.

R & P to be re-transmitted to the Reference Court forthwith.

[Akshay H. Mehta, J.]

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